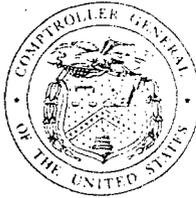


Trump

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

9953

FILE: B-190185

DATE: April 27, 1979

MATTER OF: General Services Administration - Reconsideration

[GSA Request For Determination of Insulating Material Classification]
DIGEST:

1. References to rail shipments of vermiculite, without Government contract identification, of no value in factual determination of what article moved in particular shipment.
2. Deference is given to National Classification Board's grouping of articles for rate purposes in motor transportation. 54 Comp. Gen. 89 (1974) distinguished.
3. Federal specifications, describing article for procurement purposes, is of significance in determining whether article transported should be classified as "insulating material NOI," rather than "vermiculite, other than crude," in National Motor Freight Classification.
4. Classification by contractor of commodity under rail classification not determinative of classification under National Motor Freight Classification.

AGC 00017

In a letter dated November 17, 1978, the General Services Administration (GSA) requests reconsideration of our decision in 57 Comp. Gen. 649 (1978). We held that the commodity shipped by GSA from Fort Worth, Texas, on Government bills of lading Nos. P-7191699 and D-7746350 dated June 23, 1975, and October 12, 1973, was insulating material, as described in Items 103300 thru 103416 of the National Motor Freight Classification (NMFC), rather than vermiculite, other than crude, as described in NMFC item 48510. The decision was the result of a request by Navajo Freight Lines, Inc. (Navajo) for review of audit action taken by GSA to recover by deduction, from monies otherwise due Navajo freight, overcharges based on the classification rating for vermiculite, other than crude.

Slant

CNG 00372

In support of its audit position GSA originally contended that based on a dictionary definition; on sales literature of a government contractor, Strong-Lite Products (Strong-Lite); and Federal Specification HH-I-585C vermiculite had many uses and characteristics other than those associated with insulating material. In its request for

DLG-01439

005087

reconsideration GSA takes exception to our purported reliance on use of the commodity (thermal insulation) as the sole classification criterion, continues to emphasize the various uses of vermiculite, and presents additional evidence and arguments.

GSA presents a letter dated October 6, 1978, in which Strong-Lite's plant manager represents that all vermiculite shipped from its plant in Pine Bluff, Arkansas, to GSA, Fort Worth, Texas, is classified in rail tariffs as vermiculite, other than crude, and GSA presents a prepaid rail commercial bill of lading/way bill covering a shipment of July 10, 1978, from a different supplier to GSA, Duluth, Georgia, describing the commodity as "1 C/L VERMICULITE EXPANDED OTHER THAN CRUDE (IN BAGS)," and as "(1200 bags - INSULATION THERMAL (Vermiculite A3)," both as support for its contention that the "commodity is regarded in the trade, as well as by the rail carriers, as 'vermiculite, other than crude.'"

The rail shipments shed no light on identification of the commodity shipped by Navajo. There are no references to contract numbers or federal specifications which would describe the processing and physical characteristics of the vermiculite that is moving by rail. There is no showing that it has the same characteristics as that moved by Navajo. And it does not necessarily contradict our conclusion that the vermiculite shipped is regarded in the trade as insulating material.

On the other hand, our decision contained a description of the vermiculite transported by Navajo. The sales literature of Strong-Lite cited Federal Specification HH-I-585. Paragraph 6.3 of the specification explained that crude vermiculite is mined, cleaned, and milled to a controlled size; then, to establish thermal insulating qualities, each granule is expanded to about 12 times its original size by heating to a temperature of about 2000 degrees fahrenheit. Nothing has been presented contradicting the finding that the vermiculite transported from Fort Worth by Navajo consisted of relatively low density granules that had been expanded considerably through the development of thousands of entrapped air cells.

We also received a letter from Strong-Lite identifying the contracts under which the Government procured vermiculite from the contractor in 1973, 1974, and 1975. Each contract refers to Federal Specification HH-I-585, showing the high-temperature processing required. Notice of Inspection forms, contained in the contract files,

indicate that many shipments were scheduled for movement by rail, but the files also contain reports, signed by Strong-Lite's corporate officers, certifying that thermal insulation was shipped from its plant at Pine Bluff, Arkansas. This is contrary to the representations of Strong-Lite's plant manager.

On these facts and mindful of the principle stated in the decision that the important fact is what moved, not what was billed, we can give no weight to the classification description assigned to a commodity by a contractor for transportation by rail.)

GSA also seems to argue that if a particular article composed of vermiculite is not in a crude state, it must be rated as "vermiculite, other than crude." We disagree. While we have said, as noted by GSA, that the General Accounting Office is not bound by rulings of the National Classification Board since the Board is the agent of the carriers [54 Comp. Gen. 89 (1974)] our independence covers the function of factually identifying the commodity or article that moves, and this reason for our rule does not apply to the Board in its function of grouping articles for classification purposes for transportation by motor carrier.

Various factors are considered in the process of grouping articles; among them are density, physical properties and trade and commercial considerations. Pacific Paper Products, Inc. v. Garrett Freight Lines, Inc., 351 I.C.C. 309, 316 (1975). The groupings of the article vermiculite made by the Board and published in the NMFC undermine the significance of GSA's contention that if a particular article composed of vermiculite is not in a crude state, it must be "vermiculite, other than crude." In the first place, reliance on applicability of NMFC item 48510, naming a rating for vermiculite, other than crude, overlooks the fact that NMFC item 48510, as well as NMFC item 48500, which relates to crude vermiculite, both contemplate vermiculite ore. Both items cover vermiculite in its ore form and appear under the generic heading "CLAY GROUP." Further, the NMFC, as explained to us by a member of the Board, in a letter dated January 26, 1979, makes distinctions among articles of vermiculite that have been processed. The Board member explains that if vermiculite is combined with a binder it is "vermiculite with binder" under NMFC item 103500; if combined with other specified substances the article may fall under NMFC item 103020; if processed (without defining the method or extent

thereof) it is "vermiculite, other than crude" and if the article is definitely an insulating material, and does not meet the various other specifications listed above, it would be embraced by the description "Insulating Material, NOI," in NMFC item 103300 under the generic heading "INSULATING MATERIAL GROUP."

The manner of processing and the commercial value and change in physical properties dictate whether a commodity or article under the NMFC would be classified or rated as "vermiculite, other than crude" or as "insulating material NOI." And in this case the description shown in the Government's specification for thermal insulating material helps to identify the commodity transported. }

While it may be that the processing of crude vermiculite contemplated by the phrase "vermiculite, other than crude," includes cleaning and milling to a controlled size, we are not required to resolve its definitive boundaries. What is significant is the broad spectrum of processing reflected by paragraph 6.3 of the specifications described in the decision and the drastic distinction in resultant physical properties between cleaning and milling of crude vermiculite, and the heating of granules to greatly expanded size containing thousands of entrapped air cells. Although both the milled vermiculite and the expanded vermiculite in a non-technical sense are vermiculite, other than crude (as are the articles combined with other substances), the physical properties, density and commercial value of vermiculite due to thermal expansion produce changes of such relevant motor transportation significance that they can not be ignored when classifying the articles transported under the bills of lading here involved.

Relevance of the substantial increase in size from the milled but unexpanded granule to the expanded granule seems self-evident. The low density produced by introduction of air cells ties directly into the range of densities in NMFC item 103300. We note too that the Interstate Commerce Commission recognizes that the expansive process makes vermiculite commercially valuable. Zonolite Co. v. Great Northern Ry., 315 I.C.C. 303, 304 (1961). In that case the Commission states:

"Vermiculite is a micaceous material occurring naturally as a result of the action of heat and water on the minerals biotite and phlogopite mica. It has no commercial use until it has gone through an expansion process.

* * * The ore is mined in strip and open-pit operations. After being cleaned and crushed, it is placed in bins, from which the bulk material is loaded * * * for shipment. At this stage it contains about 15 percent waste rock, and 10 to 15 percent moisture, which are removed in the expansion process at destination. * * * The crude material is inert, noncorrosive, nonexplosive, and fire retarding, and loss and damage claims have been negligible. * * *

"At destination, the application of 1,800 to 2,000° of heat for 4 to 8 seconds in commercial furnaces eliminates moisture and causes an expansion of the material from 10 to 15 times its original volume. It is this expansion characteristic which makes vermiculite commercially valuable. Prior to 1945, expanded vermiculite was principally used as a loose-fill insulation, but it has been found to be valuable also as a lightweight aggregate. * * *"

It is clear then that reliance on the use of the thermal insulation was not the sole basis of our decision, although the importance of a description assigned to an article manufactured specifically for a stated purpose in accordance with Government specifications is inescapable. Further, it should be clear that the various potential uses of vermiculite are of limited utility in determining the correct classification of a particular commodity. Rather, changes in physical properties due to processing present a useful yardstick in relating a particular identified article of vermiculite to a specific description in the NMFC. How the commodity that moved under GBL Nos. P-7191699 and D-7746350 would be classified under the rail classification is an issue not before us.

GSA states that it was unable to determine whether the value of vermiculite varies with its use. However, "value," here, relates to the commodity's worth after expansion to federal specifications and not to the array of uses to which the article could be put. Cf. the Zonolite case, supra.

Finally, GSA takes exception to our citation in the decision to the Pacific Paper Products case, supra, and to Fibre Bond Corp. v. Canadian National Ry., 318 I.C.C. 546 (1962). However, both cases were cited in support of the general principle that use is relevant in determining the classification of an article for rate purposes.

B-190185

6

The decision in 57 Comp. Gen. 649 is affirmed.


Deputy Comptroller General
of the United States